

Senate File 2231 - Introduced

SENATE FILE 2231
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 3061)

A BILL FOR

1 An Act relating to the practices and procedures of the state
2 public defender.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 13B.4, subsections 2 and 3, Code 2011,
2 are amended to read as follows:

3 2. The state public defender shall file a notice with the
4 clerk of the district court in each county served by a public
5 defender designating which public defender office shall receive
6 notice of appointment of cases. ~~The state public defender may~~
7 ~~also enter into a contract with a nonprofit organization or~~
8 ~~an attorney, designating that the nonprofit organization or~~
9 ~~attorney provide legal services to eligible indigent persons~~
10 ~~as the state public defender's designee.~~ The state public
11 defender may also designate a person admitted to practice law
12 in this state or a nonprofit organization employing persons
13 admitted to practice law in this state to be appointed by the
14 court as a designee of the state public defender. In each
15 county in which the state public defender files a designation,
16 the state public defender's designee shall be appointed by the
17 court to represent all eligible persons or to serve as guardian
18 ad litem for eligible children in juvenile court in all cases
19 and proceedings specified in the designation. The appointment
20 shall not be made if the state public defender or the state
21 public defender's designee notifies the court that the state
22 public defender's designee will not provide services in certain
23 cases as identified in the designation by the state public
24 defender.

25 3. The state public defender may contract with persons
26 admitted to practice law in this state and nonprofit
27 organizations employing persons admitted to practice law in
28 this state for the provision of legal services to indigent
29 persons. The contract may incorporate administrative rules
30 into the terms of the contract or expressly provide that
31 payments may be paid that are other than on an hourly rate
32 basis for legal services provided, including but not limited to
33 a fixed rate per case or per month.

34 Sec. 2. Section 13B.9, subsection 1, paragraphs a and b,
35 Code 2011, are amended to read as follows:

1 a. Represent ~~without fee~~ an indigent person who is under
 2 arrest or charged with a crime if the indigent person requests
 3 representation or the court orders representation when the type
 4 of case, the county, and the court have been designated for
 5 such representation by the state public defender. The local
 6 public defender shall counsel and defend an indigent defendant
 7 at every stage of the criminal proceedings and prosecute
 8 before or after conviction any appeals or other remedies which
 9 the local public defender considers to be in the interest of
 10 justice unless other counsel is appointed to the case.

11 b. Represent an indigent party, ~~without fee and upon an~~
 12 order of the court, in child in need of assistance, family in
 13 need of assistance, delinquency, and termination of parental
 14 rights proceedings pursuant to chapter 232 ~~in a county served~~
 15 ~~by a public defender~~ when designated by the state public
 16 defender to represent the indigent party in the type of case
 17 for that county. The local public defender shall counsel and
 18 represent an indigent party in all proceedings pursuant to
 19 chapter 232 ~~in a county served by a public defender to which~~
 20 the local public defender is appointed and prosecute before or
 21 after judgment any appeals or other remedies which the local
 22 public defender considers to be in the interest of justice
 23 unless other counsel is appointed to the case.

24 Sec. 3. Section 13B.9, subsection 4, paragraph a, Code 2011,
 25 is amended to read as follows:

26 a. If a conflict of interest arises or if the local public
 27 defender is unable to handle a case because of a temporary
 28 overload of cases, the local public defender shall return the
 29 case to the court. If the case is returned and the state
 30 public defender has filed a successor designation, the court
 31 shall appoint the successor designee. If there is no successor
 32 designee on file, the court shall make the appointment pursuant
 33 to section 815.10. As used in this subsection, "*successor*
 34 *designee*" may include another local public defender office, or a
 35 nonprofit organization or a person admitted to practice law in

1 this state that has contracted with the state public defender
2 under section 13B.4, subsection 3.

3 Sec. 4. Section 602.8107, subsection 1, Code 2011, is
4 amended to read as follows:

5 1. As used in this section, "*court debt*" means all fines,
6 penalties, court costs, fees, forfeited bail, surcharges
7 under chapter 911, victim restitution, ~~restitution for~~
8 court-appointed attorney fees or for expenses of a public
9 defender ordered pursuant to section 815.9, or fees charged
10 pursuant to section 356.7 or 904.108.

11 Sec. 5. Section 814.11, subsections 3 and 4, Code 2011, are
12 amended to read as follows:

13 3. In a juvenile case ~~in which a petition on appeal is~~
14 ~~required~~ under chapter 232 or a proceeding under chapter 600A,
15 the trial attorney shall continue representation throughout the
16 appeal without an additional appointment order unless the court
17 grants the attorney permission to withdraw from the case. If
18 the court grants the attorney permission to withdraw, the court
19 shall appoint an attorney who has a contract with the state
20 public defender to provide legal services in appellate cases.

21 4. ~~If the state appellate defender is unable to handle the~~
22 ~~case or withdraws from the case, or if the appeal is other~~
23 ~~than an indictable offense or denial of postconviction relief~~
24 ~~including a juvenile case in which a petition on appeal is not~~
25 ~~required or a juvenile case in which the trial attorney has~~
26 ~~withdrawn from the case,~~ In all other cases not specified in
27 subsection 2 or 3, or except as otherwise provided in this
28 section, the court shall appoint an attorney to represent
29 an indigent person who has a contract with the state public
30 defender to handle such an appeal provide legal services in
31 appellate cases.

32 Sec. 6. Section 815.4, Code 2011, is amended by striking the
33 section and inserting in lieu thereof the following:

34 **815.4 Special witnesses for indigents.**

35 1. An application for an expert or other witnesses under

1 Iowa rule of criminal procedure 2.20 shall include a statement
2 attesting that the attorney advised the indigent person of
3 the application, the expected expenses, and the potential for
4 reimbursement of the expenses pursuant to section 815.9.

5 2. a. The court shall authorize the securing of a witness
6 prior to the witness incurring any expenses.

7 b. The court shall either set in advance a maximum dollar
8 amount of the claim for expenses or approve the final amount of
9 the claim for expenses as reasonable compensation.

10 c. The state public defender shall only approve the claim
11 for the expenses of the witness if the securing of the witness
12 was authorized by the court and either the maximum dollar
13 amount of the claim for expenses was set prior to the expenses
14 being incurred or the court has approved the final amount of
15 the claim for expenses as reasonable compensation.

16 3. A witness secured for an indigent person under Iowa rule
17 of criminal procedure 2.20 shall file a claim for compensation
18 with the state public defender as required by the rules of the
19 state public defender, and the claim shall be supported by an
20 itemization specifying the time expended, services rendered,
21 and expenses incurred on behalf of the indigent person.

22 Sec. 7. Section 815.7, subsection 5, Code 2011, is amended
23 to read as follows:

24 5. The expenses shall include any sums as are necessary
25 for investigations in the interest of justice, and the cost of
26 obtaining the transcript of the trial record and briefs if an
27 appeal is filed. The attorney need not follow the case into
28 another county or into the appellate court unless so directed
29 by the court. If the attorney follows the case into another
30 county or into the appellate court, the attorney shall be
31 entitled to compensation as provided in this section. Only one
32 attorney fee shall be so awarded in any one case except that in
33 class "A" felony cases, two may be authorized if both attorneys
34 are appointed pursuant to section 815.10.

35 Sec. 8. Section 815.9, subsection 3, Code 2011, is amended

1 to read as follows:

2 3. If a person is granted an appointed attorney, the
3 person shall be required to reimburse the state for the total
4 cost of legal assistance provided to the person pursuant to
5 this section. "*Legal assistance*" as used in this section
6 shall include not only the expense of the public defender or
7 an appointed attorney, but also transcripts, witness fees,
8 expenses, and any other goods or services required by law to
9 be provided to an indigent person entitled to an appointed
10 attorney.

11 Sec. 9. Section 815.9, subsections 4, 5, 6, 7, and 9, Code
12 2011, are amended by striking the subsections and inserting in
13 lieu thereof the following:

14 4. a. If the appointed attorney is a public defender, the
15 attorney shall submit a report to the court specifying the
16 total hours of service plus expenses incurred in providing
17 legal assistance to the person. In a criminal case, the report
18 shall be submitted within ten days of the date of sentencing,
19 acquittal, or dismissal. In a case other than a criminal case,
20 the report shall be submitted within ten days of any court
21 ruling or the conclusion of a trial held in the case, or if the
22 case is dismissed within ten days of the dismissal.

23 b. If the appointed attorney is a private attorney or is
24 employed by a nonprofit organization, the state public defender
25 shall report to the clerk of the district court the amounts
26 of any approved claims for compensation and expenses paid on
27 behalf of a person receiving legal assistance after such claims
28 have been reviewed and paid by the state public defender.

29 5. If the person receiving legal assistance is convicted in
30 a criminal case, the total costs and fees incurred for legal
31 assistance shall be ordered paid when the reports submitted
32 pursuant to subsection 4 are received by the court, and the
33 court shall order the payment of such amounts as restitution,
34 to the extent to which the person is reasonably able to pay,
35 or order the performance of community service in lieu of such

1 payments, in accordance with chapter 910.

2 6. If the person receiving legal assistance is acquitted in
3 a criminal case or is a party in a case other than a criminal
4 case, the court shall order the payment of all or a portion of
5 the total costs and fees incurred for legal assistance, to the
6 extent the person is reasonably able to pay, after an inquiry
7 which includes notice and reasonable opportunity to be heard.

8 7. When ordering payment of all or a portion of the total
9 costs and fees incurred for legal assistance under subsection
10 6, the court may order payment of the costs and fees in
11 reasonable installments as provided in section 909.3, or may
12 order the entire amount due and payable. If any costs and fees
13 are not paid at the time specified in the order of the court,
14 a judgment shall be entered against the person for any unpaid
15 amount. Such judgment may be enforced by the state in the same
16 manner as a civil judgment.

17 9. Notwithstanding subsections 3 and 6, a minor granted a
18 court-appointed attorney or guardian ad litem under section
19 232.11 in a juvenile proceeding shall not be ordered to
20 reimburse costs and fees incurred for legal assistance except
21 as otherwise provided in chapter 232.

22 Sec. 10. Section 815.10, subsections 1 and 2, Code 2011, are
23 amended to read as follows:

24 1. a. The court, for cause and upon its own motion or
25 upon application by an indigent person or a public defender,
26 shall appoint the state public defender's designee pursuant
27 to section 13B.4 to represent an indigent person at any stage
28 of the criminal, postconviction, contempt, commitment under
29 chapter 229A, termination under chapter 600A, detention under
30 section 811.1A, competency under chapter 812, parole revocation
31 if applicable under section 908.2A, or juvenile proceedings or
32 on appeal of any criminal, postconviction, contempt, commitment
33 under chapter 229A, termination under chapter 600A, detention
34 under section 811.1A, competency under chapter 812, parole
35 revocation under chapter 908, or juvenile action in which the

1 indigent person is entitled to legal assistance at public
 2 expense. However, in juvenile cases, the court may directly
 3 appoint an existing nonprofit corporation established for and
 4 engaged in the provision of legal services for juveniles. An
 5 appointment shall not be made unless the person is determined
 6 to be indigent under section 815.9. ~~Only one attorney shall~~
 7 ~~be appointed~~

8 b. An indigent person is entitled to the appointment of
 9 one attorney in all cases, except that in class "A" felony
 10 cases the court may appoint two attorneys. However, in a class
 11 "A" felony case, a person who is represented by a privately
 12 retained attorney or by an attorney who has agreed to represent
 13 the person is not entitled to have an attorney appointed to
 14 represent the person based upon the indigence of the person.

15 2. If the state public defender or the state public
 16 defender's designee is unable to represent an indigent person,
 17 the court shall appoint an attorney who has a contract with the
 18 state public defender to represent the person in the particular
 19 type of case and in the county in which the case is pending.

20 Sec. 11. Section 815.10A, subsection 3, Code 2011, is
 21 amended to read as follows:

22 3. a. An attorney shall obtain court approval prior
 23 to exceeding the fee limitations established by the state
 24 public defender pursuant to section 13B.4. An attorney may
 25 exceed the fee limitations if good cause for exceeding the fee
 26 limitations is shown. An attorney may obtain court approval
 27 after exceeding the fee limitations if good cause excusing
 28 the attorney's failure to seek approval prior to exceeding
 29 the fee limitations is shown. However, failure to file an
 30 application to exceed a fee limitation prior to exceeding the
 31 fee limitation does not constitute good cause. The order
 32 approving an application to exceed the fee limitations shall
 33 be effective from the date of filing the application unless
 34 the court order provides an alternative effective date. The
 35 application and the court order approving the application to

1 exceed fee limitations and any other order affecting the amount
 2 of compensation or reimbursement shall be submitted with any
 3 claim for compensation.

4 b. Except for an application to exceed fee limitations by
 5 an attorney or guardian ad litem representing a juvenile in a
 6 juvenile proceeding, an application to exceed fee limitations
 7 shall include a statement attesting that the attorney advised
 8 the indigent person of the application, and the potential for
 9 reimbursement of the attorney fees pursuant to section 815.9.

10 Sec. 12. Section 815.14, Code 2011, is amended to read as
 11 follows:

12 **815.14 Fee for public defender.**

13 ~~When determining the~~ The amount of restitution for the
 14 expense of the public defender for each case under section
 15 910.3, ~~the expense of the public defender or the total cost~~
 16 of legal assistance required to be reimbursed under section
 17 815.9, subsection 3, shall be include all expenses incurred in
 18 the representation of the person combined with the attorney
 19 fees for the public defender calculated at the same hourly rate
 20 of compensation specified under section 815.7. ~~However, the~~
 21 The expense of the public defender ~~shall not~~ may exceed the
 22 fee limitations established in section 13B.4. The expense of
 23 the public defender required to be reimbursed is subject to a
 24 determination of the extent to which the person is reasonably
 25 able to pay, as provided for in section 815.9 and chapter 910.

26 EXPLANATION

27 This bill relates to the practices and procedures of the
 28 state public defender.

29 The bill specifies that the state public defender may
 30 designate a person admitted to practice law in this state or a
 31 nonprofit organization employing persons admitted to practice
 32 law in this state to be appointed by the court as a designee of
 33 the state public defender. Current law provides that the state
 34 public defender may enter into a contract with an attorney or a
 35 nonprofit organization to serve as the designee of the state

1 public defender.

2 The bill allows a contract between the state public defender
3 and an attorney or a nonprofit organization to incorporate
4 administrative rules into the terms of the contract or
5 expressly provide payment terms that include payments at a
6 fixed rate per case or per month.

7 The bill strikes provisions stating that the public defender
8 shall represent a person without charging a fee.

9 Under the bill, if the court orders the local public defender
10 to represent an indigent person, the order shall be for the
11 type of case, in a county, and in a court designated by the
12 state public defender.

13 If it becomes necessary to appoint a successor designee to
14 represent an indigent person because the local public defender
15 is unable to handle the case, the bill allows the successor
16 designee to be a person admitted to practice law in this state
17 who has a contract with the state public defender. Current
18 law specifies the successor designee may include another local
19 public defender office or a nonprofit organization.

20 The bill provides that in a juvenile case or in a termination
21 of parental rights proceeding under Code chapter 600A where the
22 court grants the trial attorney permission to withdraw from the
23 case during the appeal, the court shall appoint an attorney who
24 has a contract with the state public defender to provide legal
25 services in appellate cases. The bill further specifies that
26 in all other cases involving an appeal by an indigent person,
27 except as otherwise provided in Code section 814.11, the court
28 shall appoint an attorney who has a contract with the state
29 public defender to provide legal services in appellate cases.

30 The bill makes changes to securing a special witness for
31 an indigent person. Under the bill, an application for a
32 special witness shall include a statement attesting that the
33 attorney advised the indigent person of the application, the
34 expected expense, and that the indigent person may be required
35 to reimburse the state for the expense of the special witness.

1 The bill provides that the court shall authorize the
2 securing of a special witness and set the maximum amount of the
3 expenses prior to the special witness incurring any expenses or
4 approve the final amount of the claim of the special witness
5 as reasonable compensation. The bill provides that the state
6 public defender shall only approve the claim for the expenses
7 of the special witness if the securing of the special witness
8 was authorized by the court and either the maximum dollar
9 amount of the claim for expenses was set prior to the expenses
10 being incurred or the court has approved the final amount of
11 the claim for expenses as reasonable compensation.

12 The bill specifies that two separate attorney fees may
13 be awarded in a class "A" felony case if both attorneys are
14 appointed pursuant to Code section 815.10.

15 The bill specifies that an indigent person shall be
16 required to reimburse the state for the total cost of the
17 legal assistance provided, including the expense of the public
18 defender.

19 Under the bill, if an appointed attorney is a public
20 defender, the attorney shall submit a report specifying the
21 total hours of legal services provided plus expenses incurred
22 representing an indigent person, within 10 days of sentencing,
23 acquittal, or dismissal. In cases where the attorney
24 representing an indigent person is a private attorney or is
25 employed by a nonprofit organization, the bill requires the
26 state public defender to report to the clerk of the district
27 court the amount of the approved claim paid to the private
28 attorney or nonprofit organization on behalf of the indigent
29 person. The bill specifies the court shall order the total
30 costs and fees incurred for legal assistance provided to an
31 indigent person be paid as restitution, to the extent to which
32 the person is reasonably able to pay, or order the performance
33 of community service in lieu of paying restitution.

34 The bill provides that if an indigent person receiving legal
35 assistance is acquitted in a criminal case or is a party in

1 a case other than a criminal case, the court shall order the
2 indigent person to pay a portion or all of the total costs
3 and fees incurred for the legal assistance, to the extent
4 the indigent person is reasonably able to pay. The bill
5 also provides that the total costs and fees may be paid in
6 reasonable installments pursuant to Code section 909.3.

7 The bill states a minor granted a court-appointed attorney
8 or guardian ad litem shall not be ordered to reimburse costs
9 and fees incurred for legal assistance provided on behalf of
10 the minor in a juvenile proceeding.

11 In a class "A" felony case, the bill specifies that a person
12 who is represented by a privately retained attorney or by an
13 attorney who has agreed to represent the person is not entitled
14 to have an attorney appointed to represent the person based
15 upon the indigence of the person.

16 Except for an application to exceed fee limitations by an
17 attorney or guardian ad litem for representing a juvenile in
18 a juvenile proceeding, the bill requires an application to
19 exceed fee limitations to include a statement attesting that
20 the attorney advised the indigent person of the application,
21 and the potential for reimbursement of attorney fees.

22 The amount of restitution an indigent person reimburses the
23 state for the expense of the public defender under the bill
24 shall include all expenses incurred during the representation
25 of the person combined with the attorney fees calculated at the
26 hourly rates in Code section 815.7, to the extent the person is
27 reasonably able to pay. The bill also permits the expense of
28 the public defender to exceed the fee limitations established
29 in Code section 13B.4.